

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 318 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KALUBHAI RANCHHODBHAI PATEL

Versus

JIVRAJBHAI M PATEL

Appearance:

MR AS VAKIL for Petitioners

MR SN SHELAT for Respondent No. 1

MR SUNIL K SHAH for Respondent No. 4

NOTICE NOT RECD BACK for Respondent No. 6, 9

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 06/02/98

ORAL JUDGEMENT

This appeal is against order dated 29.5.1991 passed by the learned 3rd Joint Civil Judge (SD), Surat allowing the application for temporary injunction in Special Civil Suit No.169/90.

2. The plaintiffs respondents no.1 to 3 filed the present suit for specific performance of contract in respect of the land in question alleging that the respondents nos. 4 to 8 through their power of attorney holder, respondent no.9 by a prior agreement has agreed to sell the land in question to the plaintiffs. But later on the said defendants respondents no.4 to 8 have transferred the property by registered sale deed in favour of appellant defendant nos. 7 to 11 and they have put in possession. In order to protect the subject matter of the suit viz. property in question, the plaintiffs also prayed for temporary injunction pending suit restraining defendant no.7 to 11, the present appellants, from further alienating the property and from altering the status quo. The present appellants claim that they are bonafide purchasers for value without notice and their rights are not affected by prior agreement of sale.

3. The Trial Court found that prima facie plaintiff has proved that he had a prior agreement to sell in his favour. The original defendant no.6, the power of Attorney holder, was throughout present, even during the course of subsequent transaction in as much as he was the person who was present and signed as attesting witness when some other person has raised claim of prior transfer of property to himself and had objected to transfer of property to the present appellants. The plaintiff had direct knowledge from the beginning about the transaction under the agreement alleged to have taken place with the plaintiff. At this stage of proceedings the vendors could always be attributed with the knowledge of the previous transaction in respect of the property which has been subjected to later transaction. The fact whether the purchaser had knowledge about existence of prior agreement, being a fact primarily in the personal knowledge of purchaser primary burden to prove that he was a bonafide purchaser for value without notice rests with him.

3. This is in consonance with principle enunciated by Privy Council in Shankarlal Narayandas Mundade v. The New Mofussil Co.Ltd and others in AIR 1946 Privy Council 97, wherein the board relying on its earlier decision in Lim Charlia and Another Vs. Official Receiver reported in AIR 1934 Pg.68 and opined that :

"Where after entering into a contract for the sale of certain property with the plaintiff the vendor subsequently contracts to sell the same property to the defendant, then in a suit by the plaintiff under S.27 for

the specific performance of the contract in his favour, the burden of proving good faith and lack of notice of the contract lies upon the defendant."

Applying this principle, the Trial Court found that at that stage of proceedings it cannot prima facie presume that the purchaser had no knowledge of the previous transaction. With these findings about the prima facie case in favour of the plaintiff, he also found on the questions of irreparable injury and balance of convenience in favour of the plaintiff. Consequently, the defendant no.7 to 11 were directed not to change or transfer or sell the property to others pending the final decision of the suit.

4. Apart from the fact that I am in agreement with the reasons adopted by the learned Trial Judge, the property which is subject matter of the suit has been protected thus far by the operation of that interim order. The suit itself has become old and ripe for early decision. In these circumstances no interference is called for in appeal at this juncture. The appeal fails and is hereby dismissed with no order as to costs. However the Trial Court is directed to expedite the hearing of the suit and is expected to decide the suit as early as possible say within a period of 1 year.

5. Before parting with the case a request on behalf of the learned counsel for the appellants be noticed. It was stated by the learned counsel that the appellants may be permitted to construct over the property in question on their furnishing an undertaking that in case the plaintiff succeeds in the suit they shall not claim any compensation or equity in their favour on account of such consideration and either shall remove the construction on their own cost without being subject to execution or would leave the construction as it is without claiming compensation. If such an application with undertaking as aforesaid is placed before the Trial Court, the Trial Court may consider the said application in accordance with law unaffected by the dismissal of this appeal.

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